

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
FIRST APPEAL NO.1496 OF 1988.
WITH
FIRST APPEAL NO.1499 OF 1988

The Municipal Corporation of
Greater Bombay & ors. : Appellants.
versus
Jagatbhai Kantilal Shah & ors. : Respondents.

Mr.A.Y.Sakhare with Mr.J.J.Xavier for the
appellants.

Mr.A.D.Kango for Respondent Nos. 1 and 2.

CORAM : D.G.DESHPANDE, J.

DATED : 28th June 2005.

ORAL ORDER

1. These appeals arise out of an order about fixation of rateable value. Both the appeals have been filed by the BMC. Counsel for the respondents raised preliminary objection under Section 218D of the Bombay Municipal Corporation Act which reads as under :-

"218D. Appeals.-- (1) An appeal shall lie to the High Court -

(a) from any decision of the Chief Judge of the Small Cause Court in an appeal under Section 217 by which a rateable value in excess of two thousand rupees is fixed, and

Counsel for the respondents pointed out that the rateable value in this case is less than Rs.2,000/- i.e. actually it is Rs.685/-, that is the value fixed by the Investigating Officer and, therefore, the appeals do not lie.

2. However, counsel for the BMC contended, relying upon Section 218D (1)(b) that in view of this provision in particular the appeals become maintainable. Apart from this, according to him, the Court may not entertain the appeals so far as fixing the rateable value is concerned, but certain observations of the lower Court were uncalled for and are required to be struck down. He also pointed out that when the respondents,

through his advocate before the lower Court, have admitted and conceded that the structure is liable for tax, then, whether it is a farmhouse or not becomes irrelevant. He drew my attention to para 9 wherein the lower court has observed as:-

"However, Mr.Chiniwalla has submitted that as stated in appeal memo his client has no objection for rating the temporary structure taking the monthly rent....."

3. Counsel for the BMC also drew my attention to the earlier part of this para 9 wherein the lower court has stated as :-

"After careful reading of this definition nowhere the farmhouse is included either in the definition of building or temporary building. The definition are inclusive of shed and kachha construction, i.e. temporary structure. In view of this the farm house now in appeal appears not included in any of the definitions referred to above under the Bombay Municipal Corporation Act

specifically showing farmhouse either under the definition of "building" or "temporary building".

4. Counsel for the appellants contended that when in fact the respondents' advocate has admitted that his structure was liable to be taxed then either lower Court should not have made the aforesaid observations or should have kept that issue open, to be decided in appropriate proceedings.

. I find considerable force in this submission. Therefore, in view of the concession made by the counsel for the respondents before the lower Court which is reiterated here also, the aforesaid conclusion of the lower Court are required to be quashed and set aside, and issue is required to be kept open. Hence the order :-

:ORDER:

Both these appeals are partly allowed.

There will be no change in the operative part of the orders. However, the

observations of the lower Court as :-

"After careful reading of this definition nowhere the farmhouse is included either in the definition of building or temporary building. The definition are inclusive of shed and kachha construction, i.e. temporary structure. In view of this the farm house now in appeal appears not included in any of the definitions referred to above under the Bombay Municipal Corporation Act specifically showing farmhouse either under the definition of "building" or "temporary building".

are struck out. The issue, whether the farmhouse is a building or temporary building is kept open for all the time to come i.e. it is decided in appropriate case. The appeals are disposed of.

[D.G.DESHPANDE]

28/06/2005

JUDGE.